

UTAH AIR QUALITY BOARD MEETING

May 11, 2005

MINUTES

I. Call to Order.

John Veranth called the meeting to order at 1:35 p.m.

Board members present:

Nan Bunker

Jim Horrocks

John Veranth

Jerry Grover

Wayne Samuelson

Ernest Wessman

Teleconference: Dianne Nielson and Marcelle Shoop.

Executive Secretary: Richard W. Sprott

II. Next Meeting.

June 1, 2005, July 6, 2005 and August 3, 2005.

III. Minutes.

Rick Sprott discussed a problem with the transcript and the vote on the motion on page 3, third paragraph, "Dianne Nielson moved that PacifiCorp be granted standing to intervene in regard to the Sevier Power Plant." In the transcript, page 98, line 11, Mr. Veranth asked Marcelle Shoop, "...did you not vote? Line 12: Ms. Shoop: I did not vote. Line 13: Mr. Veranth: So three in favor." After talking on the phone with Ms. Shoop and asking for the record to clarify that motion. Ms. Shoop did not vote in favor of that motion. Mr. Sprott reaffirmed that she voted to oppose that motion and that is what the minutes reflect.

- Mr. Wessman approved the minutes as corrected, Jim Horrocks seconded and the Board approved unanimously

New Board members, Nan Bunker and Don Sorenson, introduced themselves.

IV. The Approval of Written Orders in IPP and Sevier Power Matters. Presented by Fred Nelson.

At the April Board meeting, there were appeals for two different permits: the Sevier Power Company Permit and IPP Unit #3 Permit. After reading the motions and the transcript, Mr. Nelson drafted written orders reflecting the Board's decisions. These written findings, based on the decisions of the last meeting, are included in the packet. Mr. Nelson has made several other non-substantive corrections to those drafts and with those changes, the two orders are presented to the Board for their consideration.

Mr. Nelson also noted that PacifiCorp attorneys had contacted him and communicated that they understood that the amicus status would allow them to not only present briefs but also to make an oral argument with respect to those briefs. Mr. Nelson recommended including that change.

Ernie Wessman recused himself from this action of the Board.

John Veranth noted that the words “In order to” should be added in reference to PacifiCorp in both the Sevier Power and IPP findings.

Marcelle Shoop commented that in the Sevier Power order draft it indicates that intervention was granted on the basis that the Sevier Citizens were the most appropriate party, and it was also her conclusion that they had shown and met the injury requirements as well and raised the question as to whether that should be included in the order.

Mr. Nelson noted that he could draft an additional paragraph to reflect that concept.

John Veranth asked if any of the parties had comments to make about how the document reads?

Fred Finlinson representing Sevier Power Company, and Blaine Rawson representing Intermountain Power thought that Fred Nelson had done an accurate job.

John Veranth asked if there was a motion from the Board to accept the amendments with the typographical corrections and the amendment as discussed.

- Jim Horrocks moved to approve the orders on the petitions to intervene for Unit 3 Intermountain Power Service and the Sevier Company Power Plant. Wayne Samuelson seconded and the Board approved unanimously.

Fred Nelson reiterated that the motion had been to accept the language of both orders with the changes and then to go Mr. Veranth for signature.

V. Sierra Club Motion for Stay -Scheduling. Presented by Fred Nelson.

Joro Walker, who represents the Sierra Club, contacted Mr. Nelson indicating that the Club would like to file a motion today to stay Board orders on the IPP and Sevier Power permit appeals that deny the Sierra Club standing since they are appealing the order to the Utah Court of Appeals. This agenda item is for the Board to schedule a time for hearing that motion.

The Board cannot make a decision on this today because, under the rules, when a motion is filed, participants to the proceeding have 10 days to file a response. So before the Board can decide this matter, they need to allow a response period.

Mr. Nelson stated that the date of the order would be when Mr. Veranth signed it.

Ms. Walker explained that the Sierra Club had a motion pending judicial appeal of the Board’s denial of their request for standing for both IPP and Sevier. She explained their concern for scheduling is that the proceeding would go on without the Club and that would prejudice the Club.

Mr. Nelson said that the Sierra Club could consider that the Board had received the motion to stay at this point. And that 10 days from today, any interested party who wanted to file a response to that could. That would put it to May 23, if the weekends were not counted. So May 23 would be the date that responses would be due. The rules

provide for an additional reply. If the Board wants to allow for a reply that could happen within the 5 days of that week, then the information could be mailed to the Board, who would have 3-4 days to look at the materials before the June 1 meeting.

Ms. Walker said that the Club would be willing to wave the opportunity to reply.

Mr. Nelson explained to the Board that he would review everything the Board needed to make a decision on the motion to stay, with the responses from the parties for the June 1 meeting. There won't need to be any additional fact finding. The actual hearing is several months off because it takes time to prepare the witnesses, the evidence, the briefs, and do discovery. A schedule needs to be proposed for that and should be ready for the next meeting.

Richard Rathbun told the Board that if the attorneys have an agreement, it would be presented as an agreement. If not, then the party's positions will be presented and the Board may have to resolve the disagreement between the parties.

Mr. Veranth asked if there was an action that the Board needed at this time?

Mr. Nelson responded yes. He explained that the Board would be getting as part of the packet of information at the June 1 meeting a copy of the 2 motions, copies of the responses, which the Board will need to be reviewing and be prepared to hear short oral presentations in respect to the motions and make a decision on those. Also there will be a recommendation for a schedule.

- Wayne Samuelson moved on the motion. Nan Bunker seconded and the Board approved unanimously.

Blaine Rawson asked when it comes to filing a motion to stay, who would be allowed to oppose that motion to stay?

Mr. Nelson replied that with respect to the IPP matter, it would be the parties to the matter and that would be IPP and the Executive Secretary. With respect to the Sevier Power proceedings, it would be the Sevier Citizens and Sevier Power Company and the Executive Secretary. Those are the parties to the proceedings at this point. The Board could allow the summation of the amicus from PacifiCorp.

PacifiCorp responded that they were not interested in doing that.

Ernie Wessman, recused himself from the discussion.

Jim Horrocks asked about establishing procedures in regards to the amicus standing.

Mr. Nelson said that it was his recommendation that the Board do that at the time that the schedule is established and define the issues to be heard and when the Board is going to hear them. At that point the Board is better able to define when it would be appropriate for them to participate.

Mr. Rathbun asked the Board who would be part of that discussion? Because as the orders that are to be signed stand, what is ready to go forward right now is only the Sevier Power and the Sevier Citizens group appeal. In the simplest terms, the discussion

would be amongst the attorneys for the parties in that appeal only and not include IPP whose case is different. Other parties that are brought back in through the Court of Appeals or other mechanisms would then be parties to the discussion.

Mr. Veranth noted that there is no pending hearing for IPP at this time, unless the court gives us guidance in that matter.

Ms. Joro said she thought that IPP had prepared a request for agency action. Is that not going forward?

Mr. Nelson replied that was correct. There is pending a request by IPP on that matter, so IPP would also need to present a schedule for hearing on that issue. It would be IPP and the Executive Secretary.

Ms. Joro stated that was the proceeding that the Sierra Club was asking that both of those proceedings to be stayed.

Dianne Nielson asked about the Sierra Club's request for a stay in the IPP matter. "If the Sierra Club does not have standing to appeal, how do they have standing to request a stay?"

Mr. Nelson said that may be one of the issues that the Board would need to address.

Mr. Nelson went on to say that the Sierra Club had filed a motion. The next step is to hear the responses. The petition that IPP has filed was combined with and was included as part of the draft order. Sierra Club, at this point, has been denied standing in that proceeding in total.

V. Propose for Approval – Approval Order Modification of the Fuel Requirements in the PM₁₀ SIP for the Kennecott Power Plant. Presented by Nando Meli.

Marcelle Shoop recused herself from this item on the agenda and excused herself from the rest of the meeting.

Mr. Meli reported that the Kennecott Utah Copper Corporation power plant is a PM₁₀ SIP source. Any requests to modify the requirements listed in the SIP are required to have Air Quality Board approval. Kennecott is requesting to modify fuel requirements for the Power Plant.

Kennecott is requesting a change so that the fuel usage limits in warmer and colder weather months are more consistent.

The unit changes proposed would not affect the emission limits that are listed in the Approval Order and the SIP.

- Mr. Grover moved that the Board approve the Modification of the Fuel Requirements in the PM₁₀ SIP for the Kennecott Power Plant. Don Sorenson seconded and the Board approved unanimously.

VII. Informational Items.

Mr. Veranth turned the time over to Rick Sprott who wanted to talk about mercury.

Mr. Sprott noted that there had been recent articles in the newspaper concerning mercury emissions from coal mines in Nevada. For a number of years, the division has been interested in tracking potential mercury issues from coal-fired power plants and other sources. Friday, May 13, the division would be participating with Idaho and Nevada water and air agencies to share information. Also attending would be EPA Region 9 who had instituted some of the pollution reduction programs at the mines. There will be a discussion on what programs and data exists for sampling and monitoring and where it might occur. Staff wants to make sure the public is made aware of any potential hazards and if they exist or not. The Division is active in this and will be getting back with the Board with more information.

A. Discussion of EPA concerns About PM10 Plan. Presented by Cheryl Heying.

Rick Sprott gave an overview of the effort the Division had made to redesignate Utah and Salt Lake County from nonattainment to attainment for the PM10 standard. With a number of clean years of data, staff felt that it was time to move forward. EPA Region 8 requested staff do some extensive modeling, which proved to be a challenge since no approved EPA PM10 model existed. Issues arose during the course of the development of the maintenance plan. Utah County found itself in a situation where the state implementation plan and the air quality plan did not conform. If the two plans are not consistent, then it creates a problem with the highway transportation plan. There can't be more traffic and emissions from vehicles than are allowed in the air quality plan. At that time Staff was able to work out an agreement with EPA Region 8 to allow some modifications on the state implementation plan for Utah County that would still be protective of the air quality but allow some adjustments to the amount of emissions that were calculated for the road systems and transit. This allowed the County to still get funding for highways and other transportation projects.

During this process, EPA Region 8 asked staff to resolve 15 items that they had concerns about. Part of the frustration for staff is that they thought they had solved the problems and then further issues were raised. Some of the issues are directly addressed in the SIP that staff sent out for comment and will come back to the Board after staff has addressed the comments. Others are not part of the SIP itself and may not require an action on the part of the Board. There have been several letters from EPA and staff has responded that the concerns are understood and staff will continue to work to do their best to address the technical and regulatory issues and resolve them.

Before discussing the agenda item, Ms. Heying introduced the "Choose Clean Air" card with pin. Staff had been going out into the community and working with different groups and offering pedometers to anyone who pledged to get out of their car and walk a certain distance. Any organization that was interested in having someone come and talk about clean air and the choices that can be made during the day, should contact her.

Ms. Heying listed the issues outlined in the April 18, 2002, letter from EPA Region 8. She gave a brief overview of what staff had done concerning the issues.

Mr. Sprott noted that the staff responses would come as part of a package that will include comments and responses at the time the plan is considered for approval. The board can then decide if staff has adequately addressed them.

Mr. Wessman asked Mr. Sprott if he had talked to Dick Long, EPA, since the March 29, 2005 letter. He also noted that the 2002 letter was 3 years old and EPA has now generated a whole new list. He asked if EPA was at all responsive, or would the Board end up down to the wire on this one.

Mr. Sprott reported that there had been discussion with the EPA. Some of these issues will be resolved at the Division level, but others may involve Dianne and the Regional Administrator. Approximately a year ago there were a number of phone calls and because of the lack of progress, the EPA Deputy Regional Administrator called the Division and asked that the phone calls stop because there wasn't any progress. EPA and DEQ then felt it would be more productive to spend time addressing EPA's concerns as best as possible. Correspondence was still going back and forth so it was a surprise to staff when EPA's letter came 2-3 months ago. The Division thinks it is important to keep moving to force the process forward to make decisions and professionally resolve them.

Mr. Horrocks asked about the time line.

Mr. Sprott said that EPA had 18 months to act on the plan. Staff anticipates coming back to the Board in June or July with a proposal that can be approved for submittal to EPA. From the date that the governor signs it and submits it, EPA has 18 months to approve or disapprove it.

Mr. Horrocks asked if EPA refuses to accept the plan, what effect does that have on the State of Utah.

Mr. Sprott replied that it means the Board has approved the SIP rules, and they will be different from the SIP that EPA has approved and it becomes a confusing situation. It exists today because the state has adopted a number of SIP changes that EPA has never acted upon. The Division has an agreement with EPA that establishes a process of dispute resolution and problem escalation. That is the process we had followed previously. The Division would use that process. We hope that the leadership could come to an agreement on what is important and what is not. Legal action is the last resort.

Ms. Heying noted that the SIP that the Board had sent out for public comment has the important criteria in terms of maintaining the PM10 national ambient air quality standards.

B. SIP Update. Presented by Jan Miller.

Ms. Miller reviewed a chart showing the status of SIP's submitted to EPA. EPA expects to propose approval by June for the three carbon monoxide maintenance plans for Provo, Salt Lake City and Ogden.

C. Compliance: No questions

D. HAPS. No questions

E. Monitoring: presented by Bob Dalley

Mr. Dalley reviewed the graph handouts

Rick Sprott announced that there will be a working lunch in conjunction with the June 1 Board meeting. It will be an orientation for the new Board members and will be open for the public. It will begin at 12 pm in room 201 at 168 North 1950 West.

Meeting adjourned 3:40 pm.